IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 14696 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BALUBHAI NARSINH JHUNJAR MARATHA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 14696 of 2004

MS KRISHNA U MISHRA for Petitioner No. 1

RULE SERVED for Respondent No. 1-2

MRS HB PUNANI, AGP for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 15/02/2005

ORAL JUDGEMENT

1. This Special Civil Application under Article 226 of the Constitution of India has been filed by the

petitioner challenging his detention in pursuance of the order passed against him by Police Commissioner, Ahmedabad City, on 3rd September, 2004, in exercise of powers conferred upon him under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (PASA Act for short). The petitioner is under detention as bootlegger from 3rd September, 2004 in pursuance of the above order.

2. The grounds of detention as placed on record reveal that the detaining authority took into consideration the fact of filing of a solitary crime registered against the petitioner before Prohibition Police Station, Eastern Zone, Ahmedabad on 2nd September, 2004 under Sections 66(1)B, 65E and 81 of the Bombay Prohibition Act. It was alleged that the petitioner was found in possession of 510 liters of prohibited country liquor. The detaining authority took into consideration thoroughly the investigation papers as placed before him and came to the conclusion that the petitioner was dealing in storing, selling and transporting the prohibited liquor and, therefore, the petitioner was a bootlegger within the meaning of PASA Act. The detaining authority also came to the conclusion that the activities of the petitioner were prejudicial to the maintenance of public order and adversely affecting the public health. The detaining authority came to the conclusion that the activities of the petitioner were required to be prevented forthwith and, therefore, after considering other measures which may be taken against the petitioner under the general law, as a last resort the detaining authority passed the order of detention against the petitioner. The said order is under challenge in this petition.

3. Learned advocate Mr.M.R.Prajapati for learned advocate Ms.K.U.Mishra for the petitioner and learned AGP Mr.H.M.Prachchhak for the respondent No.3 were heard at length. The affidavit-in-reply filed by the detaining authority as placed on record by the learned AGP is also taken into consideration.

4. Out of various grounds urged on behalf of the petitioner to challenge the order of detention as opposed and controverted by the learned AGP, it appears that this petition can be examined and disposed of on the sole issue that whether the detaining authority applied mind properly to the material placed before him, while passing the order of detention.

5. The grounds of detention as placed on record

further reveal that the petitioner was in police custody on remand, when the order of detention came to be served upon the petitioner. In this respect, the detaining authority reached to the subjective satisfaction that on police custody, the remand period being over, the petitioner would be produced before the competent court and on moving a bail application before the competent authority, the petitioner was likely to be released on bail. The detaining authority also came to the conclusion that on releasing the petitioner on bail, he was likely to be engaged himself in bootlegging activities.

6. The facts of the case are squarely covered by a decision of the Apex Court in the matter of Amritlal and other Vs. Union Government through Secretary, Ministry of Finance and others, reported in AIR 2000 (1) S.C. 3675, wherein the Apex Court observed that there must be cogent materials before the officer passing the detention order that the detenu was likely to be released on bail, inference must be drawn from the available material on record and must not be the ipse dixit of the officer passing the order of detention. Likelihood of detenu's moving an application for bail was not a cogent material and the detention order based on such material was held liable to be quashed.

7. In the present case also, while going through the papers placed before the detaining authority, it becomes clear that there was no material at all before the detaining authority to come to the conclusion that on remand to the police custody being over and on production of the petitioner before competent court, the petitioner was likely to move a bail application for releasing him on bail. There was no material at all, placed before the detaining authority to come to the conclusion that on so moving a bail application before the competent court, the petitioner was likely to be released on bail. In the above said decision, the Apex Court ruled that even the filing of an application for bail is not a cogent material forming a think that the detenu was likely to be released on bail. While in this case, there was neither any material to come to the conclusion that the petitioner was likely to be released on bail nor there was any material before the detaining authority to come to the conclusion that the petitioner was likely to be released on bail. The subjective satisfaction arrived at by the detaining authority, in absence of any material, that the petitioner was likely to be released on bail and was likely to continue his bootlegging activities is not legal, valid and in accordance with law. The order under

challenge, therefore, is required to be quashed and set aside on this ground alone.

8. In the result, the petition is allowed. The order passed by the Police Commissioner, Ahmedabad City on 3rd September, 2004 against the petitioner in exercise of powers under Section 3(1) of the PASA Act is hereby quashed and set aside. The detenu Balubhai Narsinh Hjunjar Maratha is hereby ordered to be set at liberty forthwith if he is not required to be detained in jail for any other purpose. Rule is made absolute. Direct service is permitted.

[J. R. VORA,J.]

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